IN RE LUTON AK UNCHAU

HIGH COURT SABAH & SARAWAK, KUCHING
IAN HC CHIN J
[CRIMINAL REVISION NO: 43-04-99-I]
20 MAY 1999

CRIMINAL PROCEDURE: *Revision - Detention orders - Juvenile - Juvenile ordered to undergo detention for more than three years - Whether unlawful - Whether detention orders ought not to be made consecutive - Juvenile Courts Act 1947 ss. 31, 39(2)*

On 12 April 1994, Luton Ak Unchau, a juvenile aged 15 years 4 months ('the juvenile'), was ordered by the juvenile court to be detained at the Henry Gurney School "until he reaches 21 years of age" ('the first order'). On 13 August 1994, the juvenile was subjected to another detention order by another juvenile court in respect of an offence committed before the offence in the first order, and for that he was ordered to be detained at the school for "3 years from 13 August 1994" ('the second order'). On 1 November 1996, however, the juvenile was yet again convicted of an offence under the Penal Code by another juvenile court, wherefore a Warrant of Commitment was issued by the court "sentencing" the juvenile "to imprisonment until the age of 21 years effective from 1 November 1996" ('the third order'). The learned High Court Judge, having taken cognisance of the apparent flaws in the detention orders, has since called for the relevant papers for purpose of revision.

Held:

[1] If the first order was complied with to the hilt, the juvenile would have been detained for 5 years and 8 months. That is clearly wrong because s. 39(2) of the Juvenile Courts Act, 1947 only permits the court to make a detention for a period of three years only. The first order ought to be varied by replacing the words 'until he reaches the age of 21' with the words 'for a period of three years'. This means that under the revised order, the juvenile should have been released on 11 April 1997.

[2] Under the second order, the three year term should run 'with effect from 12 April 1994' which is the date of the first order which was made on 12 April 1994. This means that the juvenile under the second order should likewise have been released on 11 April 1997.

[3] The release date under the third order is 7 December 1999 which is again more than three years as the three year period would end on 31 October 1999. The third order, therefore, is again wrong. Furthermore, the order

was made at a time when the juvenile was still being detained, and this means the third order is partly consecutive and this would result, taking the release date of 31 October 1999, in a total detention of 5 years and 6 months. Indeed, as of today ie. 20 May 1999, the juvenile had already been detained for more than 5 years under the third order.

[4] A consecutive order should not be made under the Juvenile Courts Act 1947. It was not therefore proper for the third order to have been made consecutive.

[5] The detention orders herein are accordingly varied. The juvenile is released forthwith but subject to him being placed under the supervision of a probation officer pursuant to s. 31 of the Juvenile Courts Act for a period of one year.

[Detention orders revised accordingly]

Case(s) referred to:
R v. Beamon 32 Cr App R 181

Legislation referred to:
Prevention of Crime Act 1908 (U.K), s. 5(1)
Juvenile Courts Act 1947, s. 39(2)
Penal Code, ss. 224, 454, 511

For the Public Prosecutor - Suhaimi Ibrahim; DPP
For the Juvenile - In person

Reported by WA Sharif

JUDGMENT

Ian HC Chin J:

Luton AK Unchau had three detention orders (detention at the Henry Gurney School) made against him by three different courts respectively on 12 April 1994, 13 August 1994 and 1 November 1996. The first order was in respect of the theft of a motorcycle on 7 February 1994 while the third order was for the offences of housebreaking in attempting theft that occurred also on 7 February 1994. The second order, that is the one made on 13 August, was in respect of the offence under s. 224 of the Penal Code of escaping from lawful custody on 1 March 1994. The first order was for his detention at Henry Gurney School "until he reaches 21 years of age" which means if the order was complied with to the hilt the juvenile would have been detained for five years eight months because at the time of the order he was only 15 years, four months and five days old. That order is clearly wrong because s. 39(2)

of the Juvenile Courts Act 1947, only permits the court to make a detention order for a period of three years only and not more. Therefore, the order ought to be varied by replacing the words "until he reaches 21 years of age" with the words "for a period of three years". This means under this varied or revised order, he should have been released on 11 April 1997. The second order was for him to be detained for three years from 13 August 1994 and it was in respect of an offence committed before the first order was made. Under the second order the three year term would run "with effect from 12 April 1994" which is the date of the first order, that means a detention order to run concurrent with the first order which was made on 12 April 1994. This means also that the juvenile under the second order, just as the case with the first order, should have been released on 11 April 1997. The third order resulted in a Warrant of Commitment being issued stating that it was in respect of the conviction of an offence under ss. 454 and 511 of the Penal Code and it stated that the juvenile "was sentenced to imprisonment until the age of 21 years, effective from 1 November 1996". Despite the wrong choice of the words conviction and sentence, the fact that the warrant was addressed to the officer in charge of the Henry Gurney School is indicative that a detention order was meant. The release date under this third order would be 7 December 1999 which is again more than three years as the three year period would end on 31 October 1999. This third order is again wrong. Furthermore, the order was made at a time when the juvenile was still being detained and this means the third order is partly consecutive and this would result, taking the release date of 31 October 1999, in a total detention of five years and six months. As at today (20 May 1999) he had been detained for more than five years already as a result of the third order which has a consecutive effect. Should, then, a consecutive order be made under the Juvenile Courts Act 1947? In my view it should not. In *R v. Beamon* 32 Cr App R 181 the appellant pleaded guilty to three counts of housebreaking and larceny and shopbreaking and larceny and asked for fourteen similar offences to be taken into consideration. He was sentenced to three consecutive terms of detention in a Borstal institution. The court there, at p. 181-182, said this:

> The Court does not find it necessary to pronounce definitely whether such consecutive sentences are bad in law, but has no doubt that they are undesirable because in effect they make the scheme of Borstal training workable. Section 5(1) of the Prevention of Crime Act, 1908, provides: "Subject to regulations by the Secretary of State, the Prison Commissioners may at any time after the expiration of six months, or, in the case of a female, three months, from the commencement of the term of detention, if satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life, by licence permit him to be discharged from the Borstal institution on condition that he be placed under the supervision of an authority of any society or persons named in the licence who may be willing to take

> charge of the case", and then follow provisions for the licence to be revoked. That seems to show that at the end of six months the Prison Commissioners will have to take into account the possibility of the appellant being released on licence. Supposing they thought fit to keep him in Borstal detention for eighteen months and then to release him, what would become of the other sentences? In our opinion, it is obviously undesirable in the circumstances that the consecutive sentences should stand. If the Recorder came to the conclusion that the appellant was so hardened and intractable an offender that he was not likely to profit by instruction and discipline at Borstal and might have a very bad influence on others there, he could have sent him to prison, and it does not follow that this Court would have interfered. We express the opinion that it is not the right practice to pass consecutive sentences of Borstal detention, and in this case the sentence will be made concurrent and not consecutive.

We have a provision somewhat similar to s. 5(1) of the English Prevention of Crime Act 1908 and this is in the proviso to s. 39(2) of the Juvenile Courts Act 1947 where a Director-General of Prisons may in his absolute discretion shorten the period of detention for reasons which appear to him to be sufficient or may release any such young person on licence for such period and upon such conditions as he may deem fit to impose. Therefore, for the same reason as expressed in *R v. Beamon*, it was not proper for the third order to have been made consecutive; it should have been made to run from the date of the first order since it related to an offence committed before the date of the first order. Therefore the third order should be varied with the detention order for three years only to take effect from 12 April 1994 instead of 1 November 1996.

In the circumstances of this case the said orders are varied accordingly. This means the juvenile should have been released on 11 April 1997. Unfortunately these orders came to my attention too late. All that I can do is to order his release today but subject to s. 31 which is that the juvenile is to be placed under the supervision of a probation officer or of such other person as the Juvenile Welfare Committee may appoint for a period of one year.